

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205 and 2084 of the Fish and Game Code, and to implement, interpret or make specific sections 200, 202, 205, 2080, 2084 and 2085 of said Code, proposes to add section 749.2, Title 14, California Code of Regulations, relating to the incidental take of Xantus's murrelet during its candidacy period.

Informative Digest/Policy Statement Overview

The objective of these regulations is to allow a variety of activities to continue on an interim basis, subject to the measures in the regulations designed to protect Xantus's murrelet (*Synthliboramphus hypoleucus*) during the candidacy period. Continuation of the regulations will allow the Department to focus its efforts on evaluation of the status of the species. The Department's evaluation of the species during the candidacy period will result in a status report regarding the species, which will provide a basis for the Department's recommendation to the Commission regarding the species' appropriate long-term status under California Endangered Species Act (CESA).

The proposed regulations would authorize and provide for take of Xantus's murrelet during its candidacy under CESA as follows:

1. The incidental take of Xantus's murrelet resulting from night-time (dusk to dawn) vessel operation between July 16 and January 31 is authorized within the areas from the mean high tide line extending 1 nautical mile around the entire shoreline of Santa Barbara and Anacapa islands.
2. The incidental take of Xantus's murrelet resulting from night-time vessel operation is authorized at any time outside of 1 nautical mile around the entire shoreline of Santa Barbara and Anacapa islands.
3. The incidental take of Xantus's murrelet resulting from night-time vessel operation between February 1 and July 15 within the areas from mean high tide to 1 nautical mile around the entire shoreline of Santa Barbara and Anacapa islands is authorized only if the vessel is in compliance with each of the following restrictions:
 - (a) The vessel is not engaged in night fishing or night diving;
 - (b) External loud speakers on the vessel are not in use;
 - (c) The vessel is within a designated anchorage or safe harbor during the night, except when transiting through the areas specified in the regulations; and
 - (d) Lighting on the vessels is limited to navigational lighting necessary for safe operations.

4. The incidental take of Xantus's murrelet in the course of ongoing research and monitoring of this species by public agencies other than the Department and by private parties is authorized as long as the agency or private party provides a written progress report to the Department.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Riverside Marriott, 3400 Market Street, Riverside, California, on Thursday, May 8, 2003 at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted on or before May 8, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than May 8, 2003, at the hearing in Riverside, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Marija Vojkovich, Offshore Ecosystem Coordinator, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Approximately 183 market squid vessel permittees and 39 light boat permittees, and on the order of two dozen commercial passenger fishing vessels (CPFVs) could be impacted by the regulations to exclude light and noise activities during night-time hours within 1 nautical mile of Santa Barbara and Anacapa islands during the Xantus's murrelet's breeding season (February 1 through July 15). Because both these sectors of the fishing industry can and do operate in and around the waters of other islands and the coastline, it is difficult to estimate the actual total cost of impacts. However, data from log books submitted by vessel operators provide us with some indication that the impacts would be minimal.

For the squid fishery, the impacts should be relatively small because the fishery in southern California generally operates in other areas during the late winter. From squid fishery log books for the period May 2000 to September 2002, less than 1 percent of catches was reported from both Anacapa and Santa Barbara islands during the two February to July 15 periods.

The impacts would be somewhat different between CPFV dive and CPFV finfish sectors of the industry but should also be small because the restricted area around these two smaller islands is a small part of the total area within 1 nautical mile around all eight Channel Islands. From CPFV log books for 2000 and 2001, only 29 dive trips and 18 finfish trips occurred at night at Anacapa Island during February through July. This is less than 3 percent and 1 percent, respectively, of the total dive trips and finfish trips at all eight Channel Islands during this same period. At Santa Barbara Island, only 17 dive trips and 157 finfish trips occurred at night during the same period. This is less than 2 percent and 3.5 percent, respectively, of the total dive and finfish trips at all eight Channel Islands during February through July.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: March 11, 2003

John M. Duffy
Assistant Executive Director